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Paper No. 23

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**OCT 25 2004**

**OFFICE OF PETITIONS**

In re Application of  
Bennet et al.  
Application No. 09/664,085  
Filed: September 18, 2000  
Attorney Docket No. Q858-E

**ON PETITION**

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 5, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to file a proper reply to the final Office action mailed November 12, 2003. A two month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, this application became abandoned on April 13, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional,<sup>1</sup> and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (1).

In a non-provisional application abandoned for failure to reply to a final action, the reply required for consideration of a petition to revive must be:

- (A) a Notice of Appeal (and appeal fee)
  - (B) an amendment that cancels all the rejected claims or otherwise *prima facie* places the application in condition for allowance; or
  - (C) the filing of a Request for Continued Examination (RCE).
- See MPEP 711.03(c)(III)(A)(2).

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<sup>1</sup> Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

As of this date, none of the above three acceptable forms of reply have been filed. The examiner has determined the current amendment does not prima facie place the application in condition for allowance. Petitioner has submitted three previous amendments each of which did not prima facie place the application in condition for allowance.

Acceptance and entry of amendments after a final Office action are at the discretion of the Office. The Office will not consider future amendments until a proper reply has been filed in the form of either a Notice of Appeal or a Request for Continued Examination.

Any renewed petition should be accompanied by a proper reply in the form of a Notice of Appeal or the filing of a RCE. If petitioner fails to reply in the form of a Notice of Appeal (and fee) or a proper RCE, it may be construed as an intentional delay in presenting a grantable petition, which may adversely affect petitioner's ability to revive the abandoned application. A form which may be used for purposes of filing a RCE is enclosed.

Further correspondence with respect to this matter should be addressed as follows:

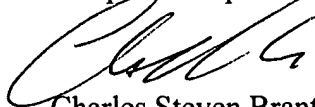
By mail: Mail Stop Petition  
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By facsimile: (703) 872-9306  
Attn: Office of Petitions

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If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Petitions Attorney  
Office of Petitions